

INTERVIEW SUMMARY

The Examiner is thanked for the courtesies extended during the telephonic interviews conducted on February 26 and 28, 2007. During the interviews, proposed claim amendments and sole rejection of the claims were discussed.

REMARKS

Claims 1 and 13 have been amended to recite "each compartment comprising two positions for securing a test device...." Support for these amendments is found in the specification at, for example, page 22, line 34 – page 23, line 17; page 26, lines 14-23; and page 27, lines 4-31, in Figures 2d and 2g, and in original claims 1 and 13, respectively. See *In re Gardner*, 177 USPQ 396, 397 (CCPA 1973) and MPEP §§ 608.01(o) and (l) (8th ed. Rev. 5, August 2006, pp. 600-92 and 600-84).

Claims 4-5 have been amended to conform to the amendment to claim 1 from which they depend and claims 16-17 have been amended to conform to the amendment to claims 13 from which they depend. Support for these amendments is found in the specification at, for example, page 22, line 34 – page 23, line 17; page 26, lines 14-23; and page 27, lines 4-31, in Figures 2d and 2g, and in original claims 4-5 and 16-17, respectively. See *id.*

Claim 18 has been amended to recite "loading, to an unused test device arranged in the compartment accessible from the ambience, the sample of the physiological liquid." Support for this amendment is found in the specification at, for example, page 15, lines 18-10; page 24, lines 4-18; page 26, lines 14-23; and page 27, line 4 - page 28, line 9 and in Figures 1-2.

It is submitted that no new matter has been introduced by the foregoing amendments. Approval and entry of the amendments is respectfully solicited.

Rejection under 35 USC § 102

Claims 1-4, 6, 8-16, and 18 were rejected solely under 35 USC § 102(e) as anticipated by Fanning *et al.*, US Patent No. 5,965,090 ("Fanning"). (Paper No. 20060928 at 2.)

For the reasons set forth below, the rejection, respectfully is traversed.

Fanning discloses an automatic sample testing machine having a loading station, an optional diluting station, an optional pipetting station, a vacuum station, an optional cut and seal station, an incubation station, an optical reading station, and a test sample card transport station. See col. 2, line 41 - col. 3, line 21 and Figure 1A. In Fanning's device, fluid samples are delivered to the wells of a test sample card. The test sample card is then moved from station to station in the machine for treatment and analysis. *Id.*

Fanning discloses that the "machine has a loading station and a sample tray moveable within the machine from the loading station to various stations, where operations are performed on the test sample and the test sample card. The samples are placed in fluid communication with the test sample cards when the samples and cards are loaded into the tray" at the loading station. Col. 2, lines 43-48. The sample test cards are then moved from station to station. See Figure 1A.

After various loading and preparation steps/stations, "the test sample positioning system 100 then advances the boat 22 across the rear of the base pan 24

behind the center mount 34 to a carousel incubation station 600. A reciprocating rack and pinion driver 610 is mounted to the center mount 34 opposite a slot 602 in the machine that pushes the cards off the cassette 26 one at a time through the slot 602 into a carousel 604." Col. 8, lines 1-7.

As for the positioning of the cards in the carousel:

As the cards 28 are being incubated in the incubation station 600, the cards are periodically, sequentially pushed out of the slots of the carousel 604 at the top of the carousel 604, one at a time, by a reciprocating rack and pinion driver 620 and an associated stepper motor. The cards 28 are moved by an optical scanner card transport station 700 past a fluorescence and transmittance optics station 800.... If the test is not complete, the transport station 700 moves the card 28 back into its slot in the carousel 604 for more incubation and additional reading. Col. 8, lines 46-65.

When the testing is complete, the sample test cards are delivered to a card output station for disposal. See col. 9, lines 5-21.

In making the rejection, the Examiner asserted that Fanning discloses "an automatic sample testing machine for testing samples stored in test cards. The machine has a test sample positioning system for moving a tray containing a plurality of test sample cards and fluid receptacle among various stations in the machine." (*Id.* at 2-3.) The Examiner further asserted that Fanning discloses that the "device processes test cards 28 (testing devices). The device also comprises a carousel incubation station 600. The carousel 604 is housed in an enclosure that is maintained at an appropriate incubation temperature for the particular assay." (*Id.* at 3.) The Examiner also asserted that Fanning discloses that the "carousel is rotated by a drive system 612 in synchronism with the movement of the boat 22 over the rear of the base pan 26 by the test sample positioning system 100, so as to place the next slot in the carousel 604

in line with the slot 602 opposite the next card in the cassette 26. As seen in the Figures the carousel is comprised on an outer housing and further includes an inner tubular member (holder member) with structural fins extending therefrom outward to an outer housing wall to form slots (compartments)." (*Id.*)

The Examiner asserted that Fanning discloses that "[a]s the cards are being incubated in the incubation station 600, the cards are periodically, sequentially pushed out of the slots of the carousel 604 at the top of the carousel 604, one at a time, by a reciprocating rack and pinion driver 620 and an associated stepper motor. (*Id.*) The Examiner then asserted that Fanning discloses that the "cards are moved by an optical scanner card transport station 700 (moving device) past a fluorescence and transmittance optics station 800 (measuring/detection station) having a transmittance substation 802 and a fluorescence substation 804 (column 8, lines 47-55)." (*Id.*)

As is well settled, anticipation requires "identity of invention." *Glaverbel Societe Anonyme v. Northlake Mktg. & Supply*, 33 USPQ2d 1496, 1498 (Fed. Cir. 1995). In a §102(b) rejection there must be no difference between what is claimed and what is disclosed in the applied reference. *In re Kalm*, 154 USPQ 10, 12 (CCPA 1967); *Scripps v. Genentech Inc.*, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991). Each and every element recited in a claim must be found in a single prior art reference and arranged as in the claim. *In re Marshall*, 198 USPQ 344, 346 (CCPA 1978); *Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir 1984).

Claims 1 and 13, as amended, recite "each compartment comprising two positions for securing a test device...." Fanning discloses a carousel incubation station

and sample test cards positioned therein. Col. 8, lines 1-7. As the Examiner noted, the claimed testing devices are comparable to the sample test cards of Fanning and the claimed holder is comparable to the carousel of Fanning. See Paper No. 20060928 at 3, lines 3 and 10-13.

Fanning, however, fails to disclose that the slots in the carousel incubation station have "two positions for securing a test device," as claimed. In fact, Fanning discloses that the slots in the carousel incubation station have only a single position for holding the sample test cards. As noted above:

As the cards 28 are being incubated in the incubation station 600, the cards are periodically, sequentially ***pushed out of the slots*** of the carousel If the test is not complete, the transport station 700 ***moves the card 28 back into its slot*** in the carousel 604 for more incubation and additional reading. Col. 8, lines 46-65.

When the testing is complete, the sample test cards are delivered to a card output station for disposal. See col. 9, lines 5-21.

Moreover, Figure 3 clearly shows that the carousel incubation station 604 has only a single position for holding the sample test cards 28. There is simply no space in a slot of the carousel incubation station of Fanning for a second position for securing the sample test cards. Thus, Fanning is completely silent as to a second position for securing a test device in a compartment of the carousel. That, however, is what is claimed.

Accordingly, the rejection fails to point to where in Fanning each and every element of claims 1 and 13, as amended, is disclosed. For this reason, the

rejection of claims 1 and 13 (and claims 2-4, 6, 8-12, and 14-16, which depend therefrom¹) has been rendered moot and should be withdrawn.

Claim 18, as amended, recites "loading, to ***an unused test device*** arranged in the compartment accessible from the ambience, the sample of the physiological liquid." Fanning discloses an automatic sample testing machine having a loading station, an optional diluting station, an optional pipetting station, a vacuum station, an optional cut and seal station, an incubation station, an optical reading station, and a test sample card transport station. See col. 2, line 41 - col. 3, line 21 and Figure 1A.

As the Examiner noted, the claimed testing devices are comparable to the sample test cards of Fanning and the claimed holder is comparable to the carousel of Fanning. See Paper No. 20060928 at 3, lines 3 and 10-13.

After loading, the sample test card is delivered to a vacuum station, where the "***fluid samples are loaded in the cards*** when the vacuum is released from the vacuum chamber." Col. 2, lines 57-58. "The test sample positioning system 100 then advances the boat 22 across the rear of the base pan 24 behind the center mount 34 to a carousel incubation station 600. A reciprocating rack and pinion driver 610 is mounted to the center mount 34 opposite a slot 602 in the machine that ***pushes the cards off the cassette 26 one at a time through the slot 602 into a carousel 604.***" Col. 8, lines 1-7.

¹ A "claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers." 35 USC § 112, paragraph 4. Accordingly, the amendment of independent claims 1 and 13 can be imputed to the rejected dependent claims 2-4, 6, 8-12, and 14-16.

The sample test cards are then incubated, delivered to a reader for analysis, delivered to a card output station for disposal. See col. 8, line 25 - col. 9, line 21.

Thus, in Fanning's machine, the fluid samples are loaded into the sample test cards at the vacuum station. Only then are the loaded sample test cards loaded into the carousel for incubation and reading. Fanning simply does not disclose a method wherein an unused testing device (Fanning's sample test card) positioned in a compartment of the holder (Fanning's carousel), as claimed. In fact, to do so would run exactly opposite to the express disclosure of Fanning.

Accordingly, the rejection fails to point to where in Fanning each and every element of claim 18, as amended, is disclosed. For this reason, the rejection of claim 18 has been rendered moot and should be withdrawn.

Accordingly, for the reasons set forth above, entry of the amendments, withdrawal of the rejection, and allowance of the claims are respectfully requested. If the Examiner has any questions regarding this paper, please contact the undersigned.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on April 2, 2007.

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